

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Paul R. Berryman)
Dist. 3, Map 124O, Group A, Control Map 124I,) Claiborne County
Parcels 55.00, 56.00, 58.00 and 62.00)
Residential Property)
Tax Year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as set forth in exhibit A.

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 25, 2008 in Tazewell, Tennessee. In attendance at the hearing were Paul R. Berryman, the appellant, and Claiborne County Property Assessor's representatives Judy Myers, David Painter and Josh Goins.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of four vacant lots located on Marble Point Way in the Rock Harbor subdivision. The subdivision borders Norris Lake and is located on the Union County and Claiborne County line on Highway 33 approximately five miles from New Tazewell, Tennessee. Subject lots vary in size, shape and topography. The lots range in size from 1.33 to 6.99 acres.

The taxpayer contended that subject parcels should be valued as set forth in exhibit A. The contended values represent the prices Mr. Berryman paid for subject lots in late 2006 and early 2007.

With respect to parcels 55, 58 and 62, Mr. Berryman testified that the lots were purchased individually, but a single sales contract was executed on November 18, 2006 at the seller's request. The sales closed on December 18, 2006 and deeds were recorded on January 9, 2007.

With respect to parcel 56, Mr. Berryman and the seller executed a separate contract on December 18, 2006. The sale closed on January 31, 2007 and the deed was recorded on February 13, 2007.

The assessor contended that subject parcels should be valued as set forth in exhibit A. In support of this position, the testimony and written analysis of Mr. Painter was offered into evidence. Essentially, Mr. Painter analyzed a total of twelve (12) comparable sales in order to arrive at his conclusions of value.

I. Jurisdiction

The threshold issue before the administrative judge concerns jurisdiction. This issue arises from the fact that the disputed appraisals were not appealed to the Claiborne County Board of Equalization. Instead, direct appeals were filed with the State Board of Equalization on November 5, 2007.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992). See also *John Orovets* (Assessment Appeals Commission, Cheatham County, Tax Year 1991). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that either he did not receive proper notice or circumstances beyond his control prevented him from appealing to the Claiborne County Board of Equalization.

The taxpayer testified that he did not receive any assessment change notices and first learned of the new appraised values after receiving the tax bills issued on or about October 1, 2007.¹ Mr. Berryman proceeded to file direct appeals with the State Board of Equalization since the Claiborne County Board of Equalization had already adjourned.

The administrative judge finds that in Tennessee property is assessed to the owner of record as of January 1 of the tax year. See Tenn. Code Ann. § 67-5-502(a)(1). The administrative judge finds that Mr. Berryman was the owner of parcels 55, 58 and 62 as of December 18, 2006 (the date of closing) and should have been sent the assessment change notices. The administrative judge finds that the assessment change notices were sent to the

¹ Claiborne County underwent a countywide reappraisal program effective as of January 1, 2007.

seller under the mistaken belief that the date the deed is recorded constitutes the date ownership transfers. The administrative judge finds that Mr. Berryman properly filed a direct appeal to the State Board of Equalization in accordance with Tenn. Code Ann. § 67-5-1412(e).

With respect to parcel 56, the administrative judge finds that the assessment change notice was properly sent to the seller since that sale did not close until January 31, 2007. However, the administrative judge finds that the Assessment Appeals Commission has found reasonable cause in identical situations. The administrative judge finds that the Commission's ruling in one such case was appealed to court by Davidson County and Chancellor Dinkins affirmed the Commission. See *Metropolitan Government of Nashville and Davidson County v. Ragsdale*, No. 04-1811-IV (Davidson Chancery, April 18, 2006). Accordingly, the administrative judge finds that the taxpayer established reasonable cause for not appealing to the Claiborne County Board of Equalization and the State Board of Equalization therefore has jurisdiction over this parcel as well.

II. Value

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

Since the taxpayer is appealing from the determination of the Claiborne County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that Mr. Berryman relied strictly on his purchase prices in arriving at his contentions of value. Respectfully, the administrative judge finds that one sale does not necessarily establish market value. As observed by the Arkansas Supreme Court in *Tuthill v. Arkansas County Equalization Board*, 797, S. W. 2d 439, 441 (Ark. 1990):

Certainly, the current purchase price is an important criterion of market value, but it alone does not conclusively determine the market value. An unwary purchaser might pay more than market value for a piece of property, or a real bargain hunter might purchase a piece of property solely because he is getting it for less than market value, and one such isolated sale does not establish market value.

The administrative judge finds that most of the sales introduced by Mr. Painter are relevant and would have been considered by a prospective buyer of subject lots.²

The administrative judge finds that the three lots purchased by Mr. Berryman on November 18, 2006 occurred during a special one day promotion. The administrative judge finds no evidence was introduced to establish whether the promotion prices included discounts not normally available. Given Mr. Berryman's testimony that he paid the asking price in each instance, it stands to reason that the lots must have seemed like a bargain.

The administrative judge finds that Mr. Painter's analysis should receive greatest weight for two reasons. First, Mr. Painter considered numerous comparable sales in arriving at his estimates of value. Second, it appears that Mr. Berryman may have been able to purchase three of the parcels at an unusually low price due to a special promotion. The administrative judge finds that since the burden of proof is on the taxpayer, additional evidence must be introduced by Mr. Berryman on this point.

ORDER

It is therefore ORDERED that the values and assessments set forth in exhibit B are hereby adopted for tax year 2007.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

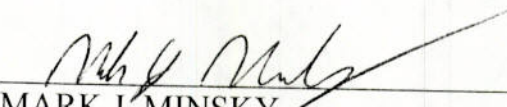
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

² Two of the sales occurred after January 1, 2007 and are technically irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that “[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events.” Final Decision and Order at 3.

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 4th day of April, 2008.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Paul R. Berryman
Kay Sandifer, Assessor of Property

EXHIBIT A

<u>Parcel</u>	<u>Current Value (\$)</u>	<u>Taxpayer's Contended Value (\$)</u>	<u>Assessor's Contended Value (\$)</u>
55	73,600	19,900	29,900
56	36,900	34,900	36,900
58	48,800	29,900	39,900
62	68,000	44,900	68,000

EXHIBIT B

<u>Parcel</u>	<u>Land Value (\$)</u>	<u>Improvement Value (\$)</u>	<u>Total Value (\$)</u>	<u>Assessment (\$)</u>
55	29,900	0	29,900	7,475
56	36,900	0	36,900	9,225
58	39,900	0	39,900	9,975
62	68,000	0	68,000	17,000